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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,991	08/06/2003	James G. McErlean	103864.140US1	7452

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EXAMINER

DESAI, HEMANT

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/634,991

Applicant(s)

MCERLEAN ET AL.

Examiner

Hemant M Desai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17, 20-37, 41-44, 46-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brahier et al. (6688346) in view of Absher (5298104).

Brahier et al. disclose a system and methods that places a label (print) on a bag, comprising a first plurality of rollers (53, 54 66, 68 fig. 2) contacting the bag film (16, fig. 2) comprising a plurality of bags, each of the bags delimited by a perforation (see col. 6, lines 28-30), at least one (66, fig. 2) of the plurality of rollers being driven to convey the bag film (16), a printer (40, fig. 2) for printing a plurality of labels.

Brahier et al., as mentioned above, disclose all the limitations except that plurality of printed labels disposed on a backing material and mechanism that removes the printed label from the backing material and place the printed label on the bag. Absher teaches a plurality of printed labels (40, fig. 3) disposed on a backing material (44, fig. 3) and mechanism (46, fig. 3) that removes the printed label from the backing material and place the printed label on the bag (10, fig. 3) to provide an inexpensive and efficient way to provide the bags with removable labels or coupons (see col. 2, lines 15-20). Therefore, Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided plurality of printed labels disposed

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on a backing material and mechanism that removes the printed label from the backing material and place the printed label on the bag as taught by Absher in the system and method of Brahier et al. to provide an inexpensive and efficient way to provide the bags with removable labels or coupons.

Regarding claims 2, Absher teaches a sensor (53, fig. 4) for determining the position of the bag to place the label (40) on the bag responsive to the position determined by the sensor (see col. 4, lines 46-65). Therefore it would have been obvious to provide a sensor as taught by Absher in the modified system and method of Brahier et al. to for determining the position of the bag to place the label.

Regarding claims 3, 21 and 41, Brahier et al. discloses a bag opening mechanism (42, fig. 2) to open the bag subsequent to labeling and a seal bar to seal the bag (see col. 5, lines 25-30).

Regarding claims 4 and 22, Brahier et al. discloses a control unit (and therefore use of sensor is an inherent feature) that controls loading of the product into each individual bag (see col. 6, lines 40-45).

Regarding claims 5 -6, 23-24 and 42, Brahier et al. discloses a sensor for detecting a position of the perforation to convey the bag a predetermined amount to the seal bar assembly (see col. 6, lines 58-65).

Regarding claims 8 and 26, Brahier et al. discloses that the bag is separated from the continuous strip along the perforation (see col. 6, lines 58-59).

Regarding claims 9, 27 and 46, Absher teaches roller (46, fig. 3) to separate the label (40, fig. 3, see col. 4, lines 28-30) from the backing material (44, fig. 3). Therefore

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it would have been obvious to provide the roller as taught by Absher in the system and method of Brahier et al. to separate the label from the backing material.

Regarding claims 10-11, 28-29 and 47-48, Absher teaches a vacuum tamp to facilitate maintaining the label on the surface prior to placing the label on the bag (see col. 33-45). Therefore it would have been obvious to provide the vacuum tamp as taught by Absher in the system and method of Brahier et al. to facilitate maintaining the label on the surface prior to placing the label on the bag.

Regarding claims 12-15 and 30-34, Absher teaches plurality of rollers (46, fig. 3), which are moving dynamically and labels (40) are dispensed from the label roll (42, fig. 3) to dispense the labels to the bag. Therefore it would have been obvious to provide the plurality of rollers, which are moving dynamically and labels are dispensed from the label roll as taught by Absher in the system and method of Brahier et al. to dispense the labels to the bag.

Regarding claims 17 and 36, Brahier et al. disclose a drive roller (66, fig. 2) therefore a motor is an inherent feature to drive the roller (66).

Regarding claims 18-19 and 43, Brahier et al. disclose a control unit that synchronize the loading of the product into each individual bag (see col. 2, lines 7-15; col. 4, lines 38-45).

Regarding claims 20, 37, 50-51, the modified system and method of Brahier et al., as mentioned above, disclose all the claimed limitations.

Regarding claim 35, Brahier et al. disclose a dancer assembly (53, 54, fig. 2) comprises a plurality of rollers.

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Regarding claim 37, the modified system and method of Brahier et al., as mentioned above, disclose all the claimed limitations.

Claim Rejections - 35 USC § 103

3. Claims 18,19, 38-40 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brahier et al. (6688346) and Absher (5298104) as applied to claims 1 and 37 above, and further in view of Lasher et al. (5771657).

The modified system and method of Brahier et al., as mentioned above, disclose all the claimed limitations of claim 1 and 37, except for placing literature pack and a robotic mechanism to place the container in the bag.

However, Lasher et al. teaches to insert a literature pack corresponding to each patient order (see col. 2, lines 46-55) in the bag and a robotic mechanism (79, fig. 7) to load the pharmaceutical bottles according to the prescription (see col. 9, lines 35-38). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the literature pack corresponding to each patient order and a robotic mechanism to load the pharmaceutical bottles according to the prescription as taught by Lasher et al. in the modified system and method of Brahier et al. to places a label on a bag and for filling a plurality of prescription orders.

Regarding claim 38, Lasher et al. teach to discard a bag because of any malfunction (see col. 9, lines 39-44). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the step of discarding the bag as taught by Lasher et al. in the modified system and method of Brahier et al. to discard the defective or unfilled bag.

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Regarding claim 40, Brahier et al. disclose a seal bar to seal the bag (see col. 5, lines 25-30).

Regarding claim 45, Brahier et al. discloses that the bag is separated from the continuous strip along the perforation (see col. 6, lines 58-59).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M. Desai
HMD